IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2301 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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BHAIKAKANAGAR RESIDENTS ASSO.

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2301 of 2001

MR GM JOSHI for Petitioner No. 1

MR RAVINDRA SHAH for Respondent No. 2-7

Mr.H.C.Patel, AGP for Respondent No.1 & 8

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 19/07/2002

ORAL JUDGEMENT

Rule. Mr.R.R.Sha appearing for respondent Nos 2 to 7 waives service of notice and Mr.H.C.Patel, Ld.AGP appearing for respondent Nos.1 & 8 waives service of

rule. With the consent of parties matter is taken up for final hearing today.

2. The only point involved in this matter is that the persons who are occupiers of plots in a housing cooperative society can be said to be affected by the outcome of the proceedings under section 81 of the Gujarat Cooperative Societies Act (hereinafter referred to as "the Act") or not.

3. The contention of the petitioner is that they are actually occupiers of the plots in question sold by the society. The case of the petitioner that they were requesting the society to admit them as the members, but, however, they have not been admitted as members. Further the case of the petitioner is that the land of the common plot and other plots are sold by the office bearers of the society and there are other irregulariries. The petitioner filed a complaint by way of representation to the District Registrar and the District Registrar ultimately issued show cause notice to the office bearers of the society under section 81 of the Act. The District Registrar passed order on 19.10.00 under section 81 of the Act whereby the Administrator is appointed.

4. The respondent No.2-society preferred appeal before the Additional Registrar and the petitioners also appeared in the said matter by caveat. Ultimately, the Additional Registrar for the reasons recorded in the order dated 10.11.2000 allowed the appeal and has set aside the order passed by the District Registrar. The petitioners who were original complainants before the District Registrar preferred revision being Revision Application No.33/00 before the State Govt under section 155 of the Act and the State Govt as per order dated 27.2.01 dismissed revision application by filing the same on the ground that the members of the petitioner association are not the affected party to the aforesaid proceedings. There is no dispute on the point that the revision before the State Govt is not decided on merits. It is this order, dated 27.2.01 passed by the State Govt in Revision Application No.33/00, which is under challenge in this petition.

5. Mr.Joshi for the petitioners submitted that the petitioners are the actual occupiers of the plots of land belonging to the society and they had made a representation to the District Registrar and, as a matter of fact, upon the representation made by the occupiers who are the petitioners herein, action under section 81 of the Act was initiated. He further submitted that

during the course of hearing pursuant to the show cause notice under section 81 of the Act, the petitioners were also heard and thereafter the District Registrar has passed order under section 81 of the Act superseding the committee. Mr.Joshi further submitted that even in the proceedings of the appeal the petitioners were heard. Therefore, it can not be said that the petitioners are not affected by the outcome of the proceedings in the appeal or, in any case, it can not be said that the petitioners are not aggrieved by the order passed by the Additional Registrar in the appeal. He, therefore, submitted that the order passed by the State Govt rejecting the revision application merely on the ground that the petitioners are not affected is illegal and the matter should be directed to be decided on merits.

6. On behalf of the respondent No.2-society Mr.Shah has submitted that the order passed by the District Registrar was without giving opportunity of making oral submissions and Mr.Shah has further submitted that the perusal of the order of the appellate authority shows that the matter is to be reconsidered by the District Registrar for the purpose of considering the question of membership of the petitioners herein and thereafter the matter is to be considered for the purpose of exercise of power under section 81 of the Act and therefore he submitted that when the matter is to be reconsidered by the District Registrar as observed in the order dated 10.11.2000 the present petition may not be entertained or in any case at the most the petitioners may be heard by the District Registrar as and when the matter is considered by the District Registrar and the order passed by the State Govt may not be interfered with.

7. I am of the view that the contention raised by Mr.Shah that the order was passed by the District Registrar is without giving opportunity to make oral submissions is not required to be considered at this stage. What is required to be considered at this stage is the only point as to whether the petitioners who are the original complainants before the District Registrar who had filed caveat in the appeal proceedings have right to prefer revision application or not. The State Govt is having revisional power under section 155 of the Act which reads as under:

"155. The State Govt and the Registrar may call for and examine the record of any inquiry or the proceedings of any other matter of any officer subordinate to them except those referred to in

> subsection (9) of section 150, for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer. If in any case, it appears to the State Govt, or the Registrar, that any decision or order or proceedings so called for should be modified, annulled or reversed, the State Govt or the Registrar, as the case may be, may after giving persons affected thereby an opportunity of being heard pass such order thereon as it or he may deem just."

The perusal of the aforesaid provisions shows that the State Govt may call for and examine the record of any proceedings or decision of a subordinate officer. There is no dispute on the point that the Additional Registrar who has taken decision is not an officer subordinate to the State Govt. The powers under section 155 are wide powers. The State Govt of its own can exercise such powers. Similarly, upon the application of any person such powers can also be exercised. When the power can be exercised even suo motu there is no reason for not to exercise the power at the instance of aggrieved party. Normally it would be the aggrieved party who should approach the State Govt invoking its revisional jurisdiction but even if the aggrieved party does not approach the State Govt the scope and ambit of section 155 shows that the State Govt of its own or, may be upon application or may be upon information received, can exercise the revisional power. Therefore, when State can exercise power suo motu also, the State Govt would not be justified in rejecting the application for exercise of revisional jurisdiction particularly because the petitioners are those persons who are in actual occupation of plots sold by the society. The contention of the petitioners is that they are not admitted as members of the Managing Committee of the society and there are several irregularities, namely, that the office bearers have unauthorisedly sold the land of the common plot etc. In a Housing Cooperative Society when the petitioners have occupied the plot on account of sale or allotment, certainly they can not be said to be a third party to the management of the society. On the contrary, the occupiers are the persons directly affected by management and administration of the society. The said aspect is coupled with the fact that the District Registrar had initiated action at the instance of petitioners and the order ultimately came to be passed. Under the circumstances, in my view, the petitioners, whic is an association of actual occupiers of the plots

is directly affected by the order under section 81 or quashing of said order by the appellate authority. The said aspect is not considered by the State Govt and the State Govt has rejected the revision application only on the ground that the petitioners are not affected. In my view, the approach of the State Govt is not only without properly considering the material on record, but is erroneous on the face of it. I am of the view that the State Govt ought to have decided the revision application of the petitioners on merits.

8. In view of the above, the order passed by the State Govt dated 127.2.01 is quashed and set aside and the State Govt is directed to take up the Revision Application No.33/01 for hearing and after giving opportunity to all affected parties said revision application may be decided on merits preferably within a period of three months from the date of receipt of writ of this court.

9. Rule is made absolute accordingly with no order as to costs.

19.7.02 (JAYANT PATEL,J)